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MOTION FILED JUN 3 1960

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959.

No. 909.

GIRTEN INVESTMENT COMPANY, PHILLIPS PETROLEUM COMPANY, AND SEALRIGHT-OSWEGO FALLS CORPORATION,
Petitioners,

vs.

STATE OF KANSAS EX REL. JOHN ANDERSON, JR., Attorney General, THE CITY OF KANSAS CITY, KANSAS, a Municipal Corporation; PAUL F. MITCHUM, Mayor Commissioner; EARL B. SWARNER, Commissioner of Finance, Health and Public Property; JOSEPH P. REGAN, Commissioner of Boulevards, Parks and Streets; and QUINDARO TOWNSHIP, WYANDOTTE COUNTY, KANSAS, a Body Politic and Corporate, *Respondents.*

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF GEORGE DOCKING AS GOVERNOR OF KANSAS.

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE.

To the Honorable and Chief Justice and the Associate Justices of the United States:

George Docking, Governor of Kansas, respectfully moves this Court, pursuant to Rule 42 of the Rules of this Court, for leave to file the accompanying brief *amicus curiae* in support of the petition for certiorari.

The questions of law as to which review is sought raise issues which transcend the particular interests of the parties to the litigation. The interest of the movant as chief Executive of the State of Kansas in these issues and his reasons for seeking an opporunity to acquaint the Court with his views are set forth in detail in the attached brief.

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BRIEF AMICUS CURIAE OF GEORGE DOCKING AS GOVERNOR OF KANSAS.

The question presented in this case is whether, under the Due Process and Equal Protection Clauses of the Fourteenth Amendment, property may be taxed and regulated without giving its owner any right whatsoever to a hearing on his contention that the taxation and regulation are illegal because they are not imposed by lawful authority.

Because of the fundamental principle which is involved, the State of Kansas has a direct and substantial interest in this question which transcends the particular interests of the parties to the litigation.

The Legislature of Kansas has delegated to municipal corporations a limited power which permits them on certain specified conditions to annex adjoining territory. The exercise of this power in any given situation directly affects property in the annexed territory by subjecting it to municipal taxes and municipal regulation. If the power of annexation is exercised in accordance with the conditions laid down by the Legislature of Kansas the property owners affected have no basis for complaint. But if the attempted annexation is not in compliance with the directions of the Legislature then the municipal corporation attempting the annexation has no more right to tax and to regulate the property affected than would a private corporation.

It is inconsistent with fundamental American conceptions of justice and fair play for a property owner to be denied the right to a fair hearing on his contention that an attempted annexation is unlawful because not in compliance with the directions of the Legislature. Yet that is the effect of the decision below. That decision holds that the property owner is not himself entitled to a hearing, and permits the Attorney General of the State to decide, in his sole discretion, whether any court may ever review the citizen's contention that his rights are threatened by unlawful action. Thus, under the decision, the right to a hearing before an impartial tribunal, which is an essential element of the concept of Due Process, is not protected by any rule of law which gives equal protection to all similarly situated but is made contingent upon the *ex parte* decision of a single executive officer.

The undersigned takes no position on the question whether the attempted annexation that has given rise to this litigation is valid or invalid under the laws of Kansas. That question is not here presented. The essential point is that the question is judicial in character and should be decided after a full hearing on the merits and not finally foreclosed by the determination of an executive officer of the State government.

The guarantees of due process and of equal protection embodied in the Fourteenth Amendment rest on a conception of justice which is essential to a free government. In the long run no State government will benefit if those guarantees are sacrificed for some immediate advantage. The true interests of the State of Kansas lie in the observance of fair play and in the preservation of the principle that no citizen should be denied the right to a full and fair hearing before an impartial tribunal on his contention that his interests are threatened by official action that has no warrant in law.

Respectfully submitted,

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